

# DECISION



## THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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FILE: B-185762

DATE: June 16, 1976

MATTER OF: Huey Paper and Material, Stacor Corporation

### DIGEST:

1. Agency's award of solicitation items to different bidders who were low as to the item each was awarded, rather than to protester whose bid was low in the aggregate, was proper where multiple awards were not prohibited by solicitation and resulted in lowest cost to the Government.
2. Allegation that solicitation specifications were unduly restrictive of competition was dismissed as untimely filed where first raised before GAO long after bid opening and agency action adverse to protester.
3. Bidder's unsolicited insertion of product model numbers in bid rendered bid nonresponsive where there was no express statement in bid that product would comply with specifications and information available to contracting officer prior to bid opening indicated models deviated from specifications.

Stacor Corporation (Stacor) and Huey Paper and Material (Huey) have protested the rejection of their bids for various items of drafting equipment procured under invitation for bids No. 810-6-16NR, issued by the United States Department of the Interior, Bureau of Reclamation. The solicitation was for the purchase of 381 drafting tables (Item 1) and 352 drafting reference desks (Item 10), and offered for trade-in or sale 381 used drafting tables (Items 2 through 9).

#### The Stacor Protest

Stacor observes that it was the lowest responsive bidder on Items 1 and 10 in the aggregate. The firm alleges that it was entitled to award of both items because the solicitation prohibited multiple or split awards for solicitation items among various manufacturers. A review of the bid abstract shows that Stacor's bids for Items Nos. 1 and 10 were \$135,611.10 and \$69,361.60, respectively. A contract for Item No. 1 was awarded to Keuffel and Esser Company whose bid was \$129,208.74. Stacor was the low bidder on Item No. 10 which has not yet been awarded.

Stacor contends that Standard Form (SF) 33A, Paragraph 10(c) (March 1969) was modified by page b, paragraphs 3 and 4 of the solicitation. SF 33A, paragraph 10(c) states:

"The Government may accept any items or group of items of any offer, unless the offeror qualifies his offer by specific limitations. UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, OFFERS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY OFFERED UNLESS THE OFFEROR SPECIFIES OTHERWISE IN HIS OFFER."

Page b, paragraphs 3 and 4 of the solicitation reads:

"Offers will be considered on the following items:  
No offer will be considered for only part of an item.

#### SCHEDULE

"Under this solicitation, the bid or bids resulting in the lowest net delivered cost to the Government of the new items will be accepted. The bids will be evaluated by computing the price quoted by each bidder, less trade-in, or deducting from the lowest offer on new equipment the highest cash amount offered for the used item, thus arriving at a basis for determining the most favorable price."

Stacor argues that the above cited paragraphs indicate that the bidder may not "bid on any smaller quantity than asked for and \* \* \* that the contracting agency will not deal with one item separately from another." Stacor points out that the solicitation states the bids will be evaluated by deducting from the lowest offer on "new equipment", the highest cash amount offered for the used items, thus arriving at a basis for determining the most favorable price. Stacor believes that since both Item No. 1 and Item No. 10 are marked as "new equipment", then Stacor's bids on both items must be considered in the aggregate. Stacor also maintains that portions of the specifications showed that the agency intended to purchase all new equipment from a single vendor.

The agency's position is that Standard Form 33A was not modified. The contracting officer states that the designation of Items Nos. 1 and 10 as "new equipment" was merely to distinguish them from

the used equipment mentioned in solicitation Items Nos. 2 through 9. The statement that "no offer will be considered for only a part of an item" referred to the 10 individual solicitation items. The schedule clearly provided 10 individual price blanks and no price blanks were provided for an "aggregate" offer.

We agree with the agency's interpretation and do not believe that the solicitation provisions, including the specifications, in any way indicate that one vendor must supply both the drafting tables and the drafting reference desks. We believe this view is reenforced by the language of the solicitation. The fourth paragraph of page b specifically states that "the bid or bids resulting in the lowest net delivered cost to the Government of the new items will be accepted." (Emphasis added.) We find nothing in the solicitation to preclude the Government from splitting the awards for contract items. The abstract of bids clearly shows that the lowest cost to the Government will be obtained by making separate awards. Our Office has consistently read SF 33A to require award on the basis of the most favorable cost to the Government, assuming the responsiveness of the bid and the responsibility of the bidder. 47 Comp. Gen. 658 (1968).

Stacor also has alleged that the specifications used for this procurement were unduly restrictive of competition. Although Stacor had corresponded with the agency about this subject prior to bid opening, it did not assert this ground for protest before our Office until the submission of its comments upon the agency report. Since this issue was raised long after bid opening and in view of the agency's adverse action of awarding Item No. 1 to another firm, this portion of Stacor's protest is untimely and will not be considered on the merits. See section 20.2 of our Bid Protest Procedures, 40 Fed. Reg. 17979, April 24, 1975.

#### The Huey Protest

Huey protested the determination by the contracting officer that Huey's bid for Item No. 1 was nonresponsive to the invitation for bids. For the reasons discussed below, we must agree with the agency's decision.

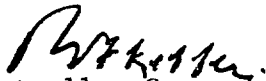
Huey submitted the low bid for Item No. 1, but typed the following on the bid Schedule: "Huey 2011B" and "Huey 2012B." From approximately 2 months' prior testing of a Huey Model No. 2011B table and from Huey's published catalog, it appeared that these Huey models deviated from the specifications in several respects. The agency reports that

the contracting officer had to reject Huey's bid since he had no way of determining whether the items being offered as referenced model numbers would comply with the requirements.

We have held that the insertion of unsolicited model numbers in a bid creates an initial ambiguity as to whether the bidder has agreed to submit items conforming with all specifications. 50 Comp. Gen. 8 (1970); B-178046, July 25, 1973. The ambiguity may be clarified by an express statement in the bid that the designated models conform with all requirements or by the contracting officer's evaluation of data, available to the Government prior to bid opening, which shows such conformity. B-170908, March 5, 1971.

Huey did not submit an express statement with its bid indicating that its models would comply with the requirements. Nor was the contracting officer able to resolve the ambiguity in the bid since the only data which he had available prior to bid opening demonstrated that the Huey models would not comply with the specifications. For example, the Huey model does not meet the specification requirement for a separate means of control for raising or lowering the table top without affecting the angle setting of the board.

Under these circumstances, we conclude that the agency's rejection of Huey's low bid was proper. Therefore, the protest is denied.

  
Deputy Comptroller General  
of the United States